

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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**OSCAR GARNER,  
Plaintiff,**

**v.**

**Case No. 16-CV-1536**

**J. HILL et al.,  
Defendants.**

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**ORDER**

Plaintiff Oscar Garner, a Wisconsin state prisoner who is representing himself, filed a complaint pursuant to 42 U.S.C. § 1983, alleging that defendants violated his civil rights at the Wisconsin Secure Program Facility. ECF No. 1. Plaintiff filed a motion for leave to proceed without prepayment of the filing fee, and the Clerk of Court sent plaintiff a letter asking him to submit a certified copy of his Prisoner Trust Account Statement in order to assess an initial partial filing fee. ECF Nos. 2-3. Plaintiff did not submit his trust account statement. Instead, he filed a motion to pay the full filing fee using his release account. ECF No. 5.

“A release account is a restricted account maintained by the Wisconsin Department of Corrections to be used upon the prisoner's release from custody upon completion of his sentence.” *Wilson v. Anderson*, No. 14-CV-0798, 2014 WL 3671878, at \*3 (E.D. Wis. July 23, 2014) (citing Wis. Admin. Code DOC § 309.466). A district court “can order disbursement from the release account for payment of the *initial* partial filing fee, [but] the PLRA does not require the Court to invade that account for payment of the balance.” *Id.* (emphasis added) (citing § 1915(b)). Nothing in the language of § 1915(b)(2) “can be interpreted as congressional intent that prisoners deplete savings

or release account balances in order to pay off their filing fee debts.” *Carter v. Bennett*, 399 F. Supp. 2d 936, 937 (W.D. Wis. 2005). “Given the rationale for segregating funds into a release account, and absent federal statutory authority compelling such a result,” *Wilson*, 2014 WL 3671878, at \*3, I will deny plaintiff’s motion to use his release account to pay the full filing fee.

If plaintiff seeks to use his release account to pay the *initial* partial filing fee, he must submit a certified copy of his Prisoner Trust Account Statement on or before **December 21, 2016** so that I can assess the initial partial filing fee. If plaintiff fails to submit this document, I have authority to dismiss his complaint without prejudice based on his failure to diligently prosecute this case. See Civil L. R. 41(c) (“Whenever it appears to the Court that the plaintiff is not diligently prosecuting the action . . . the Court may enter an order of dismissal with or without prejudice.”).

**THEREFORE, IT IS ORDERED** that plaintiff’s motion to pay the filing fee using his release account (ECF No. 5) is **DENIED**.

**IT IS FURTHER ORDERED** that on or before **December 21, 2016**, plaintiff shall mail the Clerk of Court his six-month trust account statement if he seeks to proceed with this case.

Dated at Milwaukee, Wisconsin, this 1st day of December, 2016.

s/ Lynn Adelman

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LYNN ADELMAN  
District Judge